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Reputation as Property in Virtual Economies

Economists and legal theorists have long argued that real-world economies cannot function effectively without well-defined property rights.¹ More recently, scholars have also begun to analyze at least three kinds of “virtual” economies: the online economies exemplified by eBay and other trade-facilitating mechanisms; the economies in virtual worlds such as Second Life and World of Warcraft; and the virtual reputational economies associated with MySpace and Facebook. The first two economies generally involve the exchange of familiar forms of property. But scholars have thus far failed to fully identify or analyze the property underlying the reputational economy. What that economy demonstrates, especially in its virtual form, is that reputation itself—social status and the respect of others—can usefully be understood as a form of property. Strands of this theory appear in law and scholarship, but they have not been tied together in a way that shows that reputation can be property-like even without demonstrating economic value. Virtual reputational economies show that reputation can be gained, lost, traded, protected, and shared, all in property-like fashion, without regard to whether it has independent economic value. In other words, reputation is not merely valuable; it is the new New Property.²

DIFFERENT VIRTUAL ECONOMIES, DIFFERENT PROPERTY ARCHETYPES

Virtual economies come in at least three forms, and they each employ and rely on a different conception of property. One kind of economy—the one to which people most often refer—simply involves the exchange of familiar forms

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1. See generally HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* (2000) (arguing that a lack of well-defined property rights has hampered economic growth in developing countries).
 2. See Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964).

of property (books, DVDs, stocks, and so on) through different means. This is not a virtual economy so much as it is an *online economy*, and its reference points—eBay, Craigslist, Amazon.com, and so on—are simply improved mechanisms of transfer, rather than new forms of property.

The second kind of virtual economy exists in online worlds like World of Warcraft and Second Life. This kind of *virtual-world economy* raises novel issues regarding security, wealth, and access, particularly because it involves purely virtual forms of property like “Linden dollars”³ and magical items.⁴ The rules and norms governing the protection and exchange of this kind of property, and the adjudication of disputes about it,⁵ are still in flux.⁶ Moreover, the borders between virtual economies and real-world economies are problematic,⁷ as the contributions to this Symposium demonstrate. Nevertheless, the underlying property archetypes in virtual world economies—currency, goods, and intellectual property—are essentially familiar.⁸

There is, however, a third type of online economy that is in many ways just as important as the first two, and which also involves the acquisition, trade, and protection of “property.” This is the *reputational economy* exemplified by MySpace, Facebook, and gossip blogs. Status fortunes can be made in this economy,⁹ but they can also be easily and quite dramatically lost.¹⁰ The

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3. Second Life: The Marketplace, <http://secondlife.com/whatis/marketplace.php> (last visited Nov. 9, 2008).
 4. Allakhazam.com: World of Warcraft Items, <http://wow.allakhazam.com/db/itemlist.html> (last visited Nov. 9, 2008) (listing magic items for sale).
 5. See generally Bobby Glushko, *Tales of the (Virtual) City: Governing Property Disputes in Virtual Worlds*, 22 BERKELEY TECH. L.J. 507 (2007) (describing virtual property conflicts and assessing whether existing agreements are adequate to resolve them).
 6. Kevin Deenihan, *Leave Those Orcs Alone: Property Rights in Virtual Worlds* (Mar. 26, 2008) (unpublished manuscript) (describing shared community values).
 7. See, e.g., Robert X. Cringely, *PayAcquaintance: When It Comes to Selling Virtual Property, PayPal Isn't Always Your Pal*, PBS: The Pulpit, May 6, 2004, http://www.pbs.org/cringely/pulpit/2004/pulpit_20040506_000811.html (“PayPal can’t figure out how to handle payments for such virtual goods, so they rely on the good will of the buyers and sellers involved.”); Daniel Terdiman, *eBay Bans Auctions of Virtual Goods*, CNET NEWS, Jan. 29, 2007, http://news.cnet.com/ebay-bans-auctions-of-virtual-goods/2100-1043_3-6154372.html?hhTest=1&tag=item (reporting eBay’s decision to ban sales of virtual goods in order “to protect users”).
 8. See, e.g., Edward Castronova, *Virtual Worlds: A First-Hand Account of Market and Society on the Cyberian Frontier* 5, 16-31 (Gruter Inst. Working Papers on Law, Econ., and Evolutionary Biology, Vol. 2, Art. 1, 2001), available at <http://www.bepress.com/giwp/default/vol2/iss1/art1> (describing the exchange rate, inflation rate, GNP per capita, and poverty rate in a virtual world).
 9. See, e.g., Wikipedia, Chris Crocker (Internet celebrity), [http://en.wikipedia.org/wiki/Chris_Crocker_\(Internet_celebrity\)](http://en.wikipedia.org/wiki/Chris_Crocker_(Internet_celebrity)) (last visited Nov. 9, 2008).

importance of success in this reputational market can for some people be just as important as financial wealth—many people’s “lives virtually revolve around social-networking sites and blogs.”¹¹ Indeed, by now it is old news that millions of people spend more time thinking about their Facebook profiles than their investment profiles.¹²

REPUTATION AS THE NEW NEW PROPERTY

Despite an increasing recognition of the central importance of the reputational economy, and despite a growing focus on the protection of reputation online,¹³ commentators and scholars have not yet meaningfully analyzed reputation as a form of property. This is not to say that law has ignored the importance of reputation. Since Blackstone,¹⁴ law has been concerned with the protection of reputation from unjust harm—hence the development of defamation law. Intellectual property law also addresses the acquisition, destruction, and theft of reputation. But law generally treats reputation as property only to the degree that reputation has real-world economic value, as when a business’s valuable trademark is diluted by a competitor. Robert Post, for example, argues that “[t]he concept of reputation as property presupposes that individuals are connected to each other through the institution of the market.”¹⁵ However, none of these discussions suggest that reputation is property-like even when it is not reduced to a real-world market value—in other words, they consider reputation property-like only when it has quantifiable value. As a result, none of these scholars call for a comprehensive theory of status as property, rather than simply as something valuable.

10. See, e.g., Wikipedia, Star Wars Kid, http://en.wikipedia.org/wiki/Star_Wars_kid (last visited Nov. 9, 2008).

11. Daniel J. Solove, *Do Social Networks Bring the End of Privacy?*, SCI. AM., Aug. 2008, <http://www.sciam.com/article.cfm?id=do-social-networks-bring>.

12. See Bill Tancer, *MySpace v. Facebook: Competing Addictions*, TIME.COM, Oct. 24, 2007, <http://www.time.com/time/business/article/0,8599,1675244,00.html?iid=sphere-inline-sidebar>.

13. See generally DANIEL J. SOLOVE, *THE FUTURE OF REPUTATION: GOSSIP, RUMOR, AND PRIVACY ON THE INTERNET* (2007) (arguing that the Internet demands a new balance between free speech, privacy, and anonymity).

14. 1 WILLIAM BLACKSTONE, *COMMENTARIES* *130 (“The security of his reputation or good name from the arts of detraction and slander, are rights to which every man is intitled, by reason and natural justice . . .”).

15. Robert C. Post, *The Social Foundations of Defamation Law: Reputation and the Constitution*, 74 CAL. L. REV. 691, 695 (1986).

The point is that the pursuit of status can be decoupled from the pursuit of monetary and other economic rewards, and the reputational economy need not ever (though it often does) intersect with the economy in goods and services. Not only is the acquisition of status similar to the acquisition of other forms of property; so, too, are the mechanisms by which it is transferred and protected. Reconceptualizing status acquisition and loss in these terms not only improves the reputational economy metaphor, but creates a framework to think about status conflicts more generally. And if the reputational economy is a useful framework—and it is employed commonly enough to suggest so¹⁶—then it should be at least as useful to think about reputation as property. That is, Facebookers are engaged in a sometimes-competitive enterprise of acquiring, possessing, and protecting reputation. Through their efforts, they gain reputation, which they then feel entitled to protect (from gossip or insults, for example), to share or give (for example by including friends in a high-status clique or otherwise endorsing them), and otherwise to treat as they see fit. They *own* their reputations, whether or not those reputations ever interact with the real-world economy.

The metaphor may be applied to more complex problems as well. Reputation, like other forms of property, can under certain conditions be thought of as a communal good subject to a tragedy of the commons.¹⁷ Thus when a faculty member at a prestigious school uses (or “steals”) the shared status of his institution by using its name to lend legitimacy to reprehensible speech (or simply by associating the school with shoddy scholarship) the common status of the institution may suffer, to the detriment of all faculty, even though no other individual faculty member has sufficient incentive or ability to protect it.

Having defined status as a kind of property, it is possible to further subdivide the virtual reputational economies: social networking platforms like Facebook and MySpace present one model; anonymous blogging and commentary another. In at least one important way, the former are more like online economies than they are like virtual world economies—the status they create and destroy exists both online and in the real-world reputational economy. Individuals use their real identities in these forums and often interact with people with whom they also have off-line relationships. Thus someone whose reputation is ruined in the online reputational economy likely loses it in the real world as well.

16. For example, Yale Law School’s Information Society Project held a “Reputation Economies in Cyberspace” conference in December 2007. See <http://www.law.yale.edu/news/5789.htm>.

17. See, e.g., Geoffrey C. Hazard, Jr. & Ted Schneyer, *Regulatory Controls on Large Law Firms: A Comparative Perspective*, 44 ARIZ. L. REV. 593, 605 (2002) (discussing the “commons” of a law firm’s reputation, and its possible dilution by individual lawyers).

Anonymous blogging and commentary, on the other hand, correspond to the virtual world economies describe above. The reputational property this type of activity generates exists only online, associated with virtual identities that generally are not connected to any real-world identities. What enables this division from the real-world reputational economy is anonymity, which permits bloggers¹⁸—or even blog commenters¹⁹—to gain online status, often at the expense of others, without risking their own real-world status. And as with the online and virtual world economies, challenging problems arise when the two reputational economies meet, as happens when anonymous posters (members of the virtual-world-style reputational economy) attack nonanonymous online profiles (members of the online reputational economy). From a practical standpoint, it is difficult, though not impossible,²⁰ to identify anonymous online attackers, making redress rare. But from a more theoretical standpoint, it is difficult to replace, with currency or any other kind of “old” property, the reputational property they have lost.

LOOKING FORWARD

Property law has evolved incredibly detailed rules to describe, govern, and encourage the acquisition of all kinds of different property, from land to patents. And yet when it comes to reputation—a good that people spend their lives striving to obtain and protect—we are all but bereft. Studies of property and of reputational economies could both be made more effective with a deeper understanding of status as property, not just as something valuable. Such recognition would not require greater formal regulation of status: legal scholars long ago rebutted the notion that where there is no formal law, there is no property.²¹ What really matters, as in any well-functioning economy, is that property rules be clear and enforceable, not that they be state sanctioned. The major task for future scholarship about reputational economies is to

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18. See generally S. Elizabeth Malloy, *Anonymous Blogging and Defamation: Balancing Interests on the Internet*, 84 WASH. U. L. REV. 1187 (2006) (arguing for broader libel liability for anonymous bloggers).
 19. Amir Efrati, *AutoAdmit Suit Update: Defendant “AK-47” Responds*, Wall St. J. Law Blog, Feb. 28, 2008, <http://blogs.wsj.com/law/2008/02/28/autoadmit-suit-update-defendant-ak47-responds/>.
 20. Ryan Singel, *Yale Students’ Lawsuit Unmasks Anonymous Trolls, Opens Pandora’s Box*, WIRED, July 30, 2008, <http://www.wired.com/politics/law/news/2008/07/autoadmit>; Huma Yusuf, *Lawsuits Against Bloggers Seen Rising*, ABC NEWS, July 20, 2008, <http://abcnews.go.com/Technology/story?id=5406538&page=1>.
 21. See generally ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991) (demonstrating that in certain circumstances property rules are formed, and property disputes resolved, according to informal norms rather than formal law).

determine if these reputational norms are clear and enforceable, and whether and how they should be backed by formal rules.

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